TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted] 299

MICHIGAN CENTRAL RAILROAD COMPANY, PETITIONER,

vs.

MARK OWEN AND COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

PETITION FOR CERTIORARI FILED APRIL 5, 1921.

CERTIORARI AND RETURN FILED MAY 16, 1921.

(27,622)

(27,602)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 847.

MICHIGAN CENTRAL RAILROAD COMPANY, PETITIONER,

vs.

MARK OWEN AND COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from municipal court of Chicago	2	2
Caption	3	2
Præcipe for summons	5	3
Statement of claim	5	3
Summons and return	8	4
Appearance for defendant	10	6
Order postponing trial	11	6
Finding and judgment	12	7
Order approving bond	15	8
Bond on appeal	17	9
Stipulation as to bill of exceptions	19	10
Bill of exceptions	21	11
Stipulation as to facts	21	11
Exhibit A—Extracts from rules	25	13
B—Extracts from Morris' exceptions	26	15
1—Bill of lading	27	15
2—Bill of lading	28	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 7, 1920.

	Original.	Print.
Exhibit 3—Bill of lading	29	15
4—Bill of lading	30	15
Propositions of law	31	16
Judge's certificate to bill of exceptions	34	18
Præcipe for record	36	18
Clerk's certificate	37	19
Transcript from appellate court	38	20
Assignment of errors	38	20
Clerk's certificate	39	21
Order assigning case for hearing	43	22
Order taking case under advisement	44	23
Judgment	45	23
Order allowing appeal	47	24
Order filing decision	48	24
Order approving bond	49	25
Bond on appeal	50	25
Clerk's certificate	52	26
Assignment of errors	53	26
Order taking case under advisement	55	27
Opinion	56	28
Judgment	62	32
Order denying rehearing	63	33
Clerk's certificate	64	34
Writ of certiorari and return	65	35

1 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Seventh Day of October, in the Year of Our Lord One Thousand Nine Hundred and Nineteen, Within and for the State of Illinois.

Present:
Frank K. Dunn, Chief Justice.
Justice James H. Cartwright.
Justice Orrin N. Carter.
Justice Clyde E. Stone.
Justice William M. Farmer.
Justice Warren W. Duncan.
Justice Floyd E. Thompson.
Edward J. Brundage, Attorney General.
Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL,
Clerk.

Be it remembered, that to wit, on the 15th day of September, A. D. 1919, the same being one of the days in vacation before the term of Court aforesaid, transcript of proceedings had in the Municipal Court of Chicago and the Appellate Court of the First District were filed by appellant, Michigan Central Railroad Company, a corporation, in the office of the Clerk of the Supreme Court, which records are in the words and figures following, to wit:

2 24407, 12978.

82.

Transcript of Proceedings.

The Municipal Court of Chicago.

Fees $4.00.

Frank P. Danisch, Clerk.

Praecipe Record to Appellate Court from the Municipal Court o Chicago.

Gen. No. 626,589.

MARK OWEN & COMPANY

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation.

Transcript of Proceedings.

Frank P. Danisch, Clerk.

Filed Appellate Court, Jun- 17, 1918. James S. McInerney, Clerk
Filed Sept. 15, 1919. Chas. W. Vail, Clerk Supreme Court.

3 UNITED STATES OF AMERICA.
State of Illinois, County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

Pleas, proceedings and judgments before the Municipal Court o Chicago, held in the City of Chicago, in the County of Cook an State of Illinois, at the places in the First District in said city pr vided by the corporate authorities of said city for the holding o said Court, in the year of our Lord one thousand nine hundred an eighteen, and the Independence of the United States the one hu dred and forty-second.

Present:
Honorable Leo J. Doyle, One of the Judges of the Municip Court of Chicago.
Maclay Hoyne, State's Attorney.
Anton J. Cermak, Bailiff.

Attest: FRANK P. DANISCH,
Clerk.

Be it remembered, to-wit: that on the seventh day of March, A. D. 1918, the following among other proceedings were had in said Court and entered of record therein, to-wit:

No. 626,589. Contract.

MARK OWEN & COMPANY

vs.

MICHIGAN CENTRAL RAILROAD CO., a Corporation.

4 Be it remembered, that to-wit: on the 25th day of October, A. D. 1917, a certain Præcipe and Statement of Claim was filed in the office of the Clerk of the Municipal Court, in words and figures following to-wit:

5 STATE OF ILLINOIS,
City of Chicago,
First District, ss:

In the Municipal Court of Chicago.

Contract No. 626,589.

Claim for $40.00

MARK OWEN & COMPANY

vs.

MICHIGAN CENTRAL RAILROAD CO., a Corporation.

To the Clerk:

Please issue a summons returnable at 9:30 A. M. sharp, on the 2nd day of November, 1917.

Statement of Claim.

Plaintiff alleges:

Plaintiff alleged that its claim is for money damages for loss and damage to several shipments of, to-wit, four car lots of grapes shipped as follows, to-wit:

4,291 baskets of grapes, *to* property of said plaintiff, shipped in car F. G. E. 28732, in sound and merchantable condition from Lawton, Michigan, on or about September 24, 1915, to Chicago, Illinois, via said defendant lines. On receipt of said shipment a bill of lading was issued.

1,506 baskets of grapes, the property of said plaintiff, shipped in car F. G. E. 22049, in sound and merchantable condition from via said defendant lines. On receipt of said shipment a bill of lading was issued.

6 1,630 baskets of grapes, the property of said plaintiff, shipped in car P. R. R. 102566, in sound and merchantable condition from Lawton, Michigan, on or about November 1, 1915, to Chicago, Illinois, via said defendant lines. On receipt of said shipment a bill of lading was issued.

1,466 baskets of grapes, the property of said plaintiff, shipped in car P. F. E. 5586, in sound and merchantable condition from Paw Paw, Michigan, on or about October 12, 1914, to Chicago, Illinois, via said defendant lines. On receipt of said shipment a bill of lading was issued.

Said damage being incurred by reason of the failure on the part of said defendant to use and exercise the care required of it as a common carrier of the said shipments while in its possession, custody and control, and by reason, to-wit, of not properly transporting the said shipments in safe and proper equipment, and by reason, to-wit, of the failure on the part of said defendant as a common carrier to deliver to said plaintiff at Chicago the same number of baskets of grapes as were given said defendant for transportation thereby causing a loss as follows, to-wit:

To loss of 126 baskets of grapes from said shipment, $23.30.

W. B. MOULTON AND
J. A. BATES,
Attorney for Plaintiff.

1206 Borland Bldg., Chicago, Business or Residence Address.

7 Be it remembered, that afterwards on the same day, to-wit, the 25th day of October, A. D. 1917, a certain writ of summons was issued out of the office of the Clerk of said Municipal Court, under the seal thereof, directed to the Bailiff of said Court, to execute, which writ, together with the return of the Bailiff thereon endorsed, were and are in the words and figures following, to-wit:

8 STATE OF ILLINOIS,
City of Chicago,
First District, ss:

The People of the State of Illinois to the Bailiff of the Municipal Court of Chicago, Greeting:

We command you that you summon Michigan Central Railroad Company, a corporation, if it shall be found in the First District of the City of Chicago, personally to be and appear before the Municipal Court of Chicago, in the City Hall, in the City of Chicago, at 9:30 A. M. sharp, on the 2nd day of November, A. D. 1917, to answer unto Mark Owen & Company in its claim in the sum of Forty Dollars.

And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Witness Frank P. Danisch, Clerk of our said Court, and the seal thereof, at Chicago, aforesaid, this 25th day of October, A. D. 1917.

[SEAL.] FRANK P. DANISCH,
Clerk.

Notice.

Any defendant wishing information as to what steps it may be necessary for him to take for the purpose of making a defense, may obtain the same by making inquiry at the Clerk's office.

The attention of the Defendant is also called to the following provisions of the Municipal Court Act:

Section 43. That upon the return of any such summons duly served upon the defendant, the plaintiff shall be entitled to judgment as in case of default, unless the defendant shall either appear in person at the time specified in such summons, or shall file his appearance in writing in said Municipal Court at or before the time fixed in such summons for his appearance. In case any defendant appears in person and desires to make defense to the suit, the Court shall cause him to sign and file a written appearance. Upon such default the Court shall assess the damages after hearing such
9 evidence as the Court may deem sufficient for that purpose. In case the defendant shall desire upon the trial to present any set-off or counter claim, he shall file a statement thereof with his appearance: Provided, however, the Court may, in its discretion, extend the time for the filing of such statement. It shall be the duty of the Court at half past nine o'clock A. M., sharp, of each day upon which the court is open for business, or as soon thereafter as is practicable, to call or cause to be called, the cases in which the defendants are then required to appear in person or to file their appearances in writing and in which the appearances in writing of the defendants have not been filed, and to give, or cause to be given, such direction with respect to such appearances as the Court may find necessary or proper for the information of the parties.

Section 44. That the clerk of the Municipal Court shall keep on hand and furnish to suitors and attorneys an application printed blank forms of præcipes, summonses, entries of appearance, affidavits, bonds, attachment writs, replevin writs, petitions for changes of venue, and all other necessary papers for the use of the parties to suits in such courts. Forms for such papers shall be prescribed by the Chief Justice of the Municipal Court, who shall also, from time to time, prescribe and cause to be printed forms of statements of claims to be used in said court.

Section 45. That if, in any case of the fourth class or in any case of the fifth class mentioned in said section two (2) of this Act, brought in The Municipal Court, the defendant shall appear at the time specified in the summons, or shall have entered his appearance in writing at or before the time so specified, the Court shall, at such time, or as soon thereafter as practicable, fix a time for the trial thereof, and such case shall be tried at the time so fixed, or as soon thereafter as the other business of the Court will permit.

(Endorsed upon the back of said writ of summons is the following:)

Served this writ on the within named Michigan Central Railway Company, a corporation, by delivering a copy thereof with a Præ-

cipe and statement of claim and affidavit attached thereto to S. H. Strawn, Agt. of said corporation and at the same time informing him of the contents thereof in the City of Chicago, this 26th day of October, 1917. The President, Clerk, Secretary, Superintendent, Cashier, Principal, Director, Engineer, Conductor or any other agent of said corporation not found in the City of Chicago.

ANTON CERMAK,
Bailiff.

By LOUIS RAGO,
Deputy.

10 Be it remembered, that to wit: on the 29th day of October, A. D. 1917, a certain Appearance was filed in the office of the Clerk of the Municipal Court, in words and figures following to wit:

STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

Class 4th, No. 626,589.

MARK OWEN AND COMPANY

vs.

MICHIGAN CENTRAL RAILROAD COMPANY.

We hereby enter the appearance of Michigan Central Railroad Company, defendant, and that of ourselves as its attorney in the above entitled cause.

WINSTON, PAYNE, STRAWN & SHAW,
Defendant's Attorneys.

11 Be it remembered, that afterwards, to wit: on the First day of March, A. D. 1918, the following among other proceedings were had and entered of record in said Municipal Court, which proceedings were and are in words and figures following, to wit:

Present:

Honorable Leo J. Doyle, One of the Judges of the Municipal Court of Chicago.
Maclay Hoyne, State's Attorney.
Anton J. Cermak, Bailiff.
Frank P. Danisch, Clerk.

No. 626,589, Contract.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD COMPANY.

Now comes the parties to this cause and thereupon this cause comes on in regular course for trial before the Court without a jury, and the trial of this cause is now here entered upon, and after progress therein, said trial being not yet completed, it is ordered that further proceedings in this cause be and they are hereby postponed to 3:00 o'clock P. M. on the 6th day of March, 1918.

12 Be it remembered, that afterwards, to wit: on the seventh day of March, A. D. 1918, the following among other proceedings were had and entered of record in said Municipal Court, which proceedings were and are in words and figures following, to wit:

Present:

Honorable Leo J. Doyle, One of the Judges of the Municipal Court of Chicago.
Maclay Hoyne, State's Attorney.
Anton J. Cermak, Bailiff.
Frank P. Danisch, Clerk.

No. 626,589, Contract.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO., a Corp.

Now come the parties to this cause and thereupon this cause is now here resumed before the Court without a jury and the court having heard the evidence and the arguments of counsel and being fully advised in the premises enters the following finding, to wit:

"The Court finds the issues against the Plaintiff."

Now comes the Plaintiff in this cause and moves the Court that a new trial of this cause be granted and the Court being fully advised in the premises overrules said motion and denies a new trial of this cause.

13 Now comes the Plaintiff and moves the Court in arrest of Judgment in this cause and the court being fully advised in the premises overrules said motion.

This cause coming on for further proceedings herein, it is considered by the Court that final judgment be entered on the finding herein, that the plaintiff take nothing by this suit and that the de-

fendant have and recover of and from the plaintiff the costs by the defendant herein expended and that execution issue therefor.

Now comes the Plaintiff and prays that an appeal of this cause be granted to the Appellate Court in and for the First District of Illinois which appeal is granted on condition that said party file herein an appeal bond conditioned according to law in the sum of One Hundred and no/100 Dollars, ($100.00) with security to be approved by a Judge of this Court within thirty days (30) from this date.

It is further considered by the court that sixty (60) days be allowed in which to file "Bill of Exceptions" herein.

* * * * * * *

14 Be it remembered, that afterwards, to-wit: on the fifth day of April, A. D. 1918, the following among other proceedings were had and entered of record in said Municipal Court, which proceedings were and are in words and figures following, to-wit:

Present:
Honorable Leo J. Doyle,
One of the Judges of the Municipal Court of Chicago.
Maclay Hoyne, State's Attorney.
Anton J. Cermak, Bailiff.
Frank R. Danisch, Clerk.

No. 626,589, Contract.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO.

Draft Order.

* * * * * * *

15 STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

Gen. No. 626,589.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO.

On motion of the plaintiff herein, it is hereby ordered that th Appeal Bond to the Appellate Court in the sum of $100.00, thi

day filed by the plaintiff herein, is hereby approved and ordered filed.

LEO J. DOYLE,
Judge.

Dated April 5th, 1918.

16 Be it remembered, that to-wit: on the 5th day of April, A. D. 1918, a certain Appeal Bond was filed in the office of the Clerk of the Municipal Court, in words and figures following to-wit:

17 Know all men by these presents

That we, Mark Owen and Company and the National Surety Company of the City of Chicago and State of Illinois, are held and firmly bound unto The Michigan Central Railroad, also of the same City and State in the penal sum of One Hundred ($100) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this 4th day of April A. D. 1918.

The condition of the above obligation is such, that whereas, the said Michigan Central Railroad did on the 7th day of March A. D. 1918, in the Municipal Court of Chicago, in the State aforesaid, recover a Judgment against the above bounden Mark Owen and Company for costs of suit; from which said Judgment of the said Municipal Court of Chicago, the said Mark Owen and Company has prayed for and obtained an appeal to the Appellate Court of the First District of the State.

Now therefore, if the said Mark Owen and Company shall duly prosecute its said appeal with effect, and moreover pay the amount of the Judgment, costs interest and damages rendered, and to be rendered, against it in case the said Judgment shall be affirmed in said Appellate Court then the above obligation to be void, otherwise to remain in full force and virtue.

MARK OWEN & CO., [SEAL.]
By H. D. LONG,
Agt. [SEAL.]
NATIONAL SURETY COMPANY. [SEAL.]
JEAN S. HARPER,
Attorney in Fact. [SEAL.]

Approved:
LEO J. DOYLE,
Judge. [SEAL.]

O. K.
WINSTON, STRAWN, SHAW.
Att'ys for Defendant.

18 Be it remembered, that to-wit: on the 30th day of April, A. D. 1918, a certain Stipulation was filed in the office of the Clerk of the Municipal Court, in words and figures following to-wit:

19 STATE OF ILLINOIS,
City of Chicago,
First District, ss:

In the Municipal Court of Chicago.

Contract No. 626,589.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO.

Stipulation.

It is hereby stipulated and agreed to by and between the parties hereto that the original Bill of Exceptions filed herein may be incorporated in the transcript on appeal to the Appellate Court of the First District.

WILLIAM B. MOULTON &
JOSEPH A. BATES,
Attorneys for the Plaintiff.
WINSTON, STRAWN & SHAW,
Attorneys for Defendant.

Dated this 30th day of April, 1918.

20 Be it remembered, that to-wit: on the 30th day of April, A. D. 1918, a certain Bill of Exceptions was filed in the office of the Clerk of the Municipal Court, in words and figures following to-wit:

21 STATE OF ILLINOIS,
City of Chicago,
First District, ss:

In the Municipal Court of Chicago.

Contract No. 626,589.

Filed Apr. 30, 1918. The Municipal Court of Chicago. Frank P. Danisch, Clerk.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO.

Bill of Exceptions.

Be it remembered that on the trial of this cause, on the first and on the seventh day of March, 1918, there was given as the evidence on behalf of the plaintiff and the defendant the facts set forth in a certain stipulation and certain exhibits (Nos. 1, 2, 3, and 4, and A and B), referred to therein. By agreement of both parties, in lieu of the original tariffs referred to in said stipulation as Exhibits A and B, extracts therefrom pertinent to the issues were substituted and introduced in evidence. Copies of said stipulation and of the exhibits introduced in evidence are as follows:

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys, that the following facts shall be taken as true on any trial of the above entitled cause and that no evidence on the part of either party shall be admissible, to disprove any of them, but that either party may introduce further additional evidence not contradictory to the facts herein stated to be true.

22 1. It is stipulated and agreed that the documents hereto attached marked Exhibits 1, 2, 3, and 4 are the original bills of lading issued by the defendant covering the shipments mentioned by plaintiff in its statement of claim on cars F. G. E. 28732, F. G. E. 22049, P. R. R. 102,566 and P. F. E. 5586 respectively.

2. It is stipulated and agreed that there was delivered to the defendant by the shipper at Lawton, Michigan, on Sept. 24, 1915, in car 29732, 1221 four-pound baskets of grapes, 3068 eight-pound baskets of grapes and 2 sixteen-pound baskets of grapes; that there was delivered to defendant by the shipper at Paw Paw, Michigan, on October 7, 1914, in car 22049, 1506 sixteen-pound baskets of grapes; that there was delivered to the defendant by the Shipper at Lawton, Michigan, on November 1st, 1915, in car 102566, 1003 eight-pound baskets of grapes, 627 sixteen-pound baskets of grapes,

50 sixteen-pound baskets of pears, 11 barrels of apples and 54 bushels of pears; that there was delivered to defendant at Paw Paw, Michigan on October 12, 1914, in car 5586, 1466 sixteen-pound baskets of grapes; that all of said shipments were consigned to the plaintiff at Chicago, Illinois, as the consignees thereof.

3. It is stipulated and agreed that the value of the eight-pound baskets of grapes contained in car 28732 at time and place of shipment was fifteen cents per basket and that the value of the four-pound baskets of grapes contained in said car was ten cents per basket at time and place of shipment; that the value of the sixteen-pound baskets of grapes contained in car 22049 was twenty-eight cents at time and place of shipment; that the value of the eight-pound baskets of grapes contained in car 102,566 was fifteen cents per basket at time and place of shipment; that the value of the sixteen pound baskets of grapes contained in car 5586 was twenty-four cents per basket at time and place of shipment.

23 4. It is further stipulated and agreed that all of said cars were transported by defendant from their respective points of origin to Chicago, consigned to the plaintiff herein as consignee; that car 28732 arrived in Chicago on September 25, 1915, was placed on a public delivery team track on September 27, 1915, at 8 A. M. o'clock; that notice of arrival and placement of said car was given to the plaintiff herein on September 27, 1915, at 8:45 A. M. o'clock; that plaintiff accepted said car, broke the seals thereon and started to unload it on September 27, 1915, at 9 A. M. o'clock; and that the unloading of said car was completed by the plaintiff on September 29, 1915, at 6 P. M. o'clock; that car 22049 arrived in Chicago on October 8, 1914, was placed on a public delivery team track on October 9, 1914, at 8:00 A. M. o'clock; that notice of arrival and placement of said car was given to the plaintiff herein on October 9, 1914, at 9 A. M. o'clock; that plaintiff accepted said car, broke the seals thereon, and started to unload it on October 9, 1914, at 9:30 A. M. o'clock; and that the unloading of said car was completed by the plaintiff on October 9, 1914, at 6 P. M. o'clock; that car 102566 arrived in Chicago on November 2, 1915, was placed on a public delivery team track on November 3, 1915, at 8 A. M. o'clock; that notice of arrival and placement of said car was given to the plaintiff herein on November 3, 1915, at 11 A. M. o'clock; that plaintiff accepted said car, broke the seals thereon, and started to unload it on November 5, 1915, at 8 A. M. o'clock; and that the unloading of said car was completed by the plaintiff on November 6, 1915, at 6 P. M. o'clock; that car 5586 arrived in Chicago on October 13, 1914, was placed on a public delivery track on October 13, 1914, at 4 P. M. o'clock; that notice of arrival and placement of said car was given to the plaintiff herein on October 13, 1914, at 4:50 P. M. o'clock; that plaintiff accepted said car, broke the seals, thereon, and started to unload it on
24 October 14, 1914 at 8 A. M. o'clock; and that the unloading of said car was completed by the plaintiff on October 15, 1914, at 6 P. M. o'clock.

5. It is further stipulated and agreed that at the time the plaintiff accepted and started to unload each of said cars, every car contained the same number of baskets and pounds of grapes as were received by the defendant in said car for transportation at the point of origin thereof; named herein, and that at said time the doors of each of said cars were sealed with the same seals intact as were placed on them by the defendant when it received said grapes for transportation.

6. It is further stipulated and agreed that the plaintiff received out of car 28732, 3012 eight-pound baskets of grapes, 1214 four-pound baskets of grapes and 2 sixteen-pound baskets of grapes; that plaintiff received out of car 22049, 1275 sixteen-pound baskets of grapes; that plaintiff received out of car 102,566, 979 eight-pound baskets of grapes 50 sixteen-pound baskets of grapes; 11 barrels of apples, and 54 bushels of pears; that plaintiff received out of car 5586, 1458 sixteen-pound baskets of grapes.

7. It is further stipulated and agreed that the tariffs of the defendant hereto attached and made a part hereof, marked Exhibits A and B respectively, were lawfully on file with the Interstate Commerce Commission and in effect at the times all of said shipments moved and were delivered.

Dated this 27th day of February, A. D. 1918.

(Signed) WILLIAM B. MOULTON AND
JOSEPH A. BATES,
Attorneys for Plaintiff.

(Signed) WINSTON, STRAWN AND SHAW,
Attorneys for Defendant.

25

EXHIBIT A.

Extracts from Rules 2, 3 and 4 of Car Demurrage, Charges and Rules, from Tariff I. C. C. No. 4497; Issued February 4, 1914, Effective March 10, 1914.

Rule 2—Free Time Allowed.

(*a*) Forty-eight hours (two days) free time will be allowed for unloading or loading on all commodities.

Rule 3—Computing Time.

NOTE.—In computing time Sundays and legal holidays, (National State and Municipal) will be excluded, except as otherwise provided in paragraph (*a*) of Rule 9. When a legal holiday falls on a Sunday, the following Monday will be excluded.

(*a*) On cars held for loading, time will be computed from the first 7 a. m. after placement on public delivery tracks. (See Rule No. 6.)

(*b*) On cars held for order, time will be computed from the first 7 a. m. after the day on which notice of arrival is sent to consignees.

(*c*) On cars held for unloading, time will be computed from the first 7 a. m. after placement on public-delivery tracks and after the day on which notice of arrival is sent to consignee.

(*d*) On cars to be delivered on any other than public-delivery tracks time will be computed from the first 7 a. m. after actual or constructive placement on such tracks. See Rule 4 (Notification) and rules 5 and 6 (Constructive Placement.)

NOTE.—"Actual Placement" is made when a car is placed in an accessible position for loading or unloading or at a point previously designated by the consignor or consignee.

(*e*) On cars to be delivered on interchange tracks of industrial plants performing their own switching service, time will be computed from the first 7 a. m. following actual or constructive placement on such interchange tracks until return thereto. See Rule 4 (Notification) and rules 5 and 6 (Constructive Placement). Cars returned loaded will not be recorded released until necessary billing instructions are given.

Rule 4—Notification.

(*a*) Consignee shall be notified by carrier's Agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain points of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and numbers of the original car. In case car is not placed on public-delivery track within twenty-four hours after notice of arrival has been sent a notice of placement shall be given to consignee.

(*b*) When cars are ordered stopped in transit the party ordering the cars stopped shall be notified upon arrival of cars at point of stoppage.

26 (*c*) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

(*d*) In all cases where notice is required, the removal of any part of the contents of a car by the consignee shall be considered notice thereof to the consignee.

Michigan Central Railroad Co.,

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Shipper's No._____

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Lawton, Michigan, Sept 24, 1915,

from _____ the property described below, in apparent good order except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Carrier (which word is to be understood throughout this bill of lading as meaning any person or corporation in possession of the property under the bill of lading) agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If...Times 1st	If 1st Class	If 2nd Class	If 3rd Class	If 4th Class	If 5th Class	If Class A	If Class B	If Class C	If Class D	If Class E	If Special per _____

(Mail Address—Not for purposes of Delivery.)

Consigned to Mark Owen & Co.,

Destination Chicago State of Ill County of _____

Route _____ Car Initial F.G.E. Car No. 28732

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN	
8	SHOE [illegible]				If charges are to be

	2 16 lb Bas Do	32	2.42		
	S.L.C. Chs Gtd				
	1/2 Tank Ice 17.00				
	Exhibit 1				

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid)

Charges Advanced:

$ 17.00

L. Stokes & Sons Shipper. W. S. Barron Agent

Per R.S. Per M

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

27

1

KALAMAZOO, LAKE SHORE & CHICAGO RY. CO., MICHIGAN UNITED TRACTION CO., Lessees.

Shipper's No. _____

Agent's No. _____

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Paw Paw, Mich., Oct. 7 19 14,

from _____ the property described below, in apparent good order except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Carrier (which word is to be understood throughout this bill of lading as meaning any person or corporation in possession of the property under the bill of lading) agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

IF...Times 1st	IF 1st Class	IF 2nd Class	IF 3rd Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Special per

(Mail Address—Not for purpose of Delivery.) W

Consigned to Mark Owen & Co.,

Destination Chicago State of Ill County of Cook

Route M. C. Car Initial F.G.E. Car No. 22049

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN

					here "To be Prepaid."
	S. L. C. Chgs Gtd.				Received $_____ to apply in prepayment of the charges on the property described hereon.
					Agent or Cashier
					Per _____ (The signature here acknowledges only the amount prepaid)
					Charges Advanced: $_____
	Exhibit 2				

Mark Owen & Co., Shipper. W. A. Mumbrue Agent

Per W. A. Aseltine. Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.) 1

28

MICHIGAN CENTRAL RAILROAD COMPANY.

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Lawton, Mich., Nov. 1, 1915,

from _____ the property described below, in apparent good order except as noted (contents of packages unknown), marked, consigned and destined as indicated below, which said Carrier (which word is

					Charges Advanced: $_____
	Exhibit 3				

L. Stokes & Sons Shipper. W. S. Barron Agent

Per R. S. Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.) 1

29

case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is

owner's risk and expense or destroyed without compensation.

SEC. 3. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

MICHIGAN CENTRAL RAILROAD COMPANY

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Shipper's No.

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Lawton, Mich., Nov. 1, 1915

from

the property described below, in apparent good order except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Carrier (which word is to be understood throughout this bill of lading as meaning any person or corporation in possession of the property under the bill of lading) agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to *is In Cents per 100 Lbs.*

IF...Three 1st	IF 1st Class	IF 2nd Class	IF 3rd Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Special per

(Mail Address—Not for purposes of Delivery)

Consigned to Mark Owen & Co.,

Destination Chicago State of Ill County of

Route Car Initial P.R.R. Car No. 102566

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
1003	8 lbs Bsk Grapes			

If charges are to be prepaid, write or stamp

CONDITIONS

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this carrier agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch, unless by specific cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or

	54 Bu do			
	11 Bbls. Apples			
	S.L.C. Ghgs Gtd			
	Keep vents open			
	Exhibit 3			

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid)

Charges Advanced:

$_____

L. Stokes & Sons Shipper. W. S. Barron Agent

Per R.S. Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

1

29

KALAMAZOO, LAKE SHORE & CHICAGO RAILWAY CO.,

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Paw Paw, Mich Oct. 12 19 14

from _____ the property described below, in apparent good order except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Carrier (which word is to be understood throughout this bill of lading as meaning any person or corporation in possession of the property under the bill of lading) agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

IF...Times 1st	IF 1st Class	IF 2nd Class	IF 3rd Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E

IF Special per _____

(Mail Address—Not for purposes of Delivery.)

Consigned to Mark Owen & Co.,

Destination Chicago State of Ill. County of _____

Route _____ Car Initial P.F.E. Car No. 5586

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	1466 Climax Bask Grapes	28570		

If charges are to be prepaid, write or

	Keep vent open				
	Exhibit 4				

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid)

Charges Advanced:

$_____

Fruit Growers Union Shipper. Per _____

W. A. Mumbrue Agent Per _____

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

30

1

EXHIBIT B.

Extract from Morris' Exceptions to Official Classification No. 130-G. I. C. C. No. 406.

Item 1199.

Owners will be required to load and unload freight, in carloads, when carried at carload rates, also L. C. L. shipment of heavy or bulky freight such as cannot be handled by station employees, with the following exceptions:

Applying at Chicago, Ill.

Less than carload shipments of Green Fruit or Vegetables will be loaded or unloaded by this Company without additional charge. Carload shipments of Green Fruit or Vegetables will be received at or delivered to the car door without additional charge for loading or unloading. When owners request carload shipments of Green Fruit or Vegetables sorted in cars or upon station platforms, in lots according to marks or otherwise, for any purpose whatever, this Company will assess 1 cent per 100 lbs. for such sorting service, in addition to the regular transportation charge.

(Here follows bills of lading marked pages 27, 28, 29, 30.)

31 The foregoing was all the evidence introduced on the trial of this cause.

Thereupon the court held certain propositions of law at the request of and in behalf of the plaintiff as follows:

1. The court holds as a proposition of law in this case that a common carrier is liable for all losses of goods which do not arise from the act of God, or the public enemies.

2. The court holds as a proposition of law in this case, that the liability of the defendant railroad as that of a common carrier did not end with the setting of the cars upon the tracks for unloading, until after the plaintiff as consignee had had a reasonable and proper opportunity to remove the contents after notice of the arrival of the cars.

3. The court holds as a proposition of law in this case that the liability of the defendant railroad in the shipments in this case continued to be that of a common carrier after the cars had been set upon the tracks for unloading until the plaintiff as consignee had had a reasonable and proper opportunity to remove the contents thereof.

4. The Court holds that on the submitted evidence in this case cars Nos. FGE 28732-FGE 22049-PRR 102566-PFE 5586 were unloaded by the plaintiff as consignee within a reasonable and proper time after placement on a public delivery track and after the day in which notice of arrival was sent to the consignee.

5. The court holds as a proposition of law in this case that the liability of the defendant railroad company as a common carrier continued after the arrival of the shipments at destination so long as any duty remained to be performed by said defendant as a common carrier.

6. The court holds as a proposition of law in this case that under and by virtue of Item 1199 of Morris' Exceptions to Official
32 Classification No. 130-G, I. C. C.-406 submitted as evidence in this case there was imposed upon the defendant as a common carrier the duty to deliver the shipments of fruits in this case at the car door.

The defendant by its counsel then and there excepted to the holding of each and all of said propositions.

Thereupon the court held certain propositions of law at the request and in behalf of the defendant, as follows:

1. The court holds as a matter of law, that where goods are lost by an interstate carrier holding such goods as a warehousemen no presumption of liability is raised in a suit by a plaintiff to recover damage for such loss by a showing that the goods were in the possession of the carrier as such warehousemen and were not delivered by it.

2. The court holds, as a matter of law, that where goods are lost while an interstate carrier is holding them as warehousemen, the burden is on a plaintiff suing to recover damages for such loss to prove affirmatively that defendant was negligent in taking care of such goods before there can be any recovery.

3. The court holds, as a matter of law that the burden is on the plaintiff in this case to prove affirmatively that the defendant was negligent before there can be any recovery.

4. The court holds, as a matter of law, that the defendant in this case was only liable as a warehousemen at the time the losses complained of occurred.

5. The court holds as a proposition of law that the action of the plaintiff herein in accepting the cars involved in this action and breaking seals thereon and starting to unload said cars, terminated the defendant's liability as a common carrier, and that thereafter defendant was only liable as a warehousemen.

33 The plaintiff by its counsel then and there excepted to the holding of each and all of said propositions.

The defendant by its counsel then and there asked the court to hold the following propositions of law:

6. The court holds as a proposition of law in this case, that the defendant's liability as carrier terminated when the four cars involved in this action were placed on public delivery team tracks and notice thereof given to consignee.

The court, however, refused to hold this proposition of law to which ruling and decision of the court and to its ruling in refusing to hold said proposition the defendant, by its counsel, then and there excepted.

Whereupon the court after argument of counsel entered a finding in said cause in favor of the defendant and against the plaintiff for the costs of said suit, to which action of the court the plaintiff by its counsel then and there excepted.

Whereupon the plaintiff by its counsel moved the court to set aside the finding and grant a new trial of said cause, which motion the court after argument overruled and denied, to which action of the court the plaintiff by its counsel then and there excepted.

Whereupon the plaintiff by its counsel moved the court in arrest of judgment upon said finding, which motion the court denied, to which action of the court the plaintiff by its counsel then and there excepted.

Whereupon the court entered judgment upon the finding against the plaintiff for the costs of the suit, to which action the plaintiff by its counsel then and there excepted.

34 Whereupon the plaintiff by its counsel prayed an appeal in said cause to the Appellate Court of Illinois in and for the First District thereof, which appeal was allowed by the court, upon filing by the plaintiff of a bond of one hundred dollars within

thirty days from the date of said judgment, and the bill of exceptions within sixty days from the date of said judgment.

Thereupon the plaintiff by its counsel moved the court to vacate the judgment entered in said cause, which motion the court after argument of counsel overruled and denied, to which action the plaintiff by its counsel then and there excepted.

Which was all the evidence offered, heard, or received, and all of the proceedings had on the trial of the above cause.

Forasmuch as the foregoing matters do not otherwise appear of record, the plaintiff tenders this transcript to the presiding Judge of said Municipal Court and requests said Judge to sign and place the same on file in the said cause. It is, therefore, certified by the undersigned Judge of the Municipal Court of Chicago that the foretaken and offered on the trial of said cause and the rulings of the going is a full, true, and complete transcript of all the evidence court with respect to said evidence, and a correct statement of such proceedings in said case as said party desired to have reviewed.

Dated 30th day of April, 1918.

LEO J. DOYLE,
Judge of the Municipal Court of Chicago.

Filed Apr. 30, 1918. The Municipal Court of Chicago. Frank P. Danish, Clerk.

O. K.
WINSTON, STRAWN & SHAW,
Att'ys for Deft's.

35 Be it remembered, that to-wit: on the 4th day of May A. D. 1918, a certain præcipe for record was filed in the office of the Clerk of the Municipal Court, in words and figures following to-wit:

36 STATE OF ILLINOIS,
City of Chicago,
First District, ss:

In the Municipal Court of Chicago.

Contract No. 626,589.

MARK OWEN & CO.

vs.

MICHIGAN CENTRAL RAILROAD CO.

Præcipe for Transcript of Record.

The clerk of said court is hereby requested to prepare a transcript of the record in the above entitled cause and certify to the correctness thereof, said transcript to be made up so as to contain—

First. A copy of the process in said cause.

Second. All pleadings filed by the parties.

Third. The judgment rendered by the Court.

Fourth. All orders in said cause.

Fifth. The bill of exceptions in said cause.

Sixth. The appeal bond.

Dated at Chicago this 4th day of May, 1918.

WM. B. MOULTON AND
JOSEPH A. BATES,
Attorneys for Plaintiff.

To Frank P. Danisch.

We hereby consent to the filing of the above præcipe in said cause, and waive all notice of the time of filing.

WINSTON, STRAWN & SHAW,
Attorneys for Defendant.

37 *Certified Transcript of Record.*

STATE OF ILLINOIS,
County of Cook, ss:

I, Frank P. Danisch, Clerk of the Municipal Court of Chicago, in said County and State, and the keeper of the records and files thereof, in the City, County and State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause (except the bill of exceptions, the original of which is incorporated herein according to law), and incorporated herein by stipulation of the parties, lately pending in said court, wherein Mark Owen & Company, Plaintiff and Michigan Central Railroad Co., a corporation, Defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, aforesaid, this 5th day of June 1918.

FRANK P. DANISCH,
Clerk.

38 In the Appellate Court of Illinois, First District, October Term, 1918.

Term No. —.

General No. —.

MARK OWEN & COMPANY, Appellant,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, Appellee.

Appeal from the Municipal Court, City of Chicago.

Assignment of Errors.

And now comes the said Mark Owen and Company, appellant, by its attorneys, William B. Moulton and Joseph A. Bates, and says that on the record and proceedings and in entering the judgment aforesaid there is manifest error in this, to-wit:

First. The finding of the Court is contrary to the evidence.

Second. The finding of the Court is contrary to the law and the evidence.

Third. The judgment of the Court is contrary to the law and the evidence.

Fourth. The trial court erred in overruling appellant's motion for a new trial.

Fifth. The trial Court erred in overruling appellant's motion in arrest of judgment.

Sixth. The trial Court erred in entering judgment on the finding.

Seventh. The trial Court erred in holding as law in the decision of said cause the written propositions tendered by the appellee herein numbered 3, 4, and 5.

Eighth. The trial Court erred in not rendering judgment in favor of the appellant after having held as law the written propositions of law tendered by the appellant herein numbered 1, 2, 3, 4, 5 and 6.

39

Wherefore, by reason of the above errors, this defendant and appellant prays that the judgment entered in said cause may be reversed.

WILLIAM B. MOULTON AND
JOSEPH A. BATES,
Attorneys for Appellant.

In the Appellate Court, First District, Illinois.

No. 24407.

MARK OWEN AND COMPANY, Appellant,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corportion, Appellee.

Appeal from the Municipal Court of Chicago.

I, James S. McInerney, Clerk of the Appellate Court, within and for the First District of Illinois, and keeper of the records, files and seal thereof, do hereby certify that the Transcript of Record hereto attached and marked 24407 is the original transcript of record filed in said Appellate Court, on the 17th day of June, A. D. 1918, by said Appellant.

In testimony whereof, I have hereunto set my hand and seal of said Court, at Chicago, Illinois, this 11th day of July, A. D. 1919.

[SEAL.] JAMES S. McINERNEY,
Clerk of the Appellate Court, First District, Illinois.

40 12978. 82.

Record from Appellate Court, First District, to Supreme Court.

Nisi Prius Gen. No. 626,589.

Appellate Gen. No. 24407.

Supreme Court Gen. No. 12978.

MARK OWEN & COMPANY, a Corp., Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corp., Appellant.

Filed Sep. 15, 1919. Chas. W. Vail, Clerk of Supreme Court.

41 At a Term of the Appellate Court, Begun and Held at Chicago, on Tuesday, the Fourth day of March, in the year of our Lord One Thousand Nine Hundred and Nineteen within and for the First District of the State of Illinois.

Present:

Hon. Charles A. McDonald, Presiding Justice.
" David F. Matchett, Justice.
" Albert C. Barnes, Justice.
James S. McInerney, Clerk.
Charles W. Peters, Sheriff.

No. 24407.

MARK OWEN AND COMPANY, a Corporation, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal from Municipal Court of Chicago.

Be it remembered, That heretofore on the first day of October, A. D. 1918, it being one of the days of said October Term, A. D. 1918, certain proceedings were had in said Court and entered of record in words and figures following to-wit:

42 At a Term of the Appellate Court, Begun and Held at Chicago, on Tuesday, the First day of October, in the year of our Lord One Thousand Nine Hundred and Eighteen, within and for the First District of the State of Illinois.

Present:

Hon. William E. Dever, Presiding Justice.
" William H. McSurely, Justice.
" Jesse Holdom, Justice.
James S. McInerney, Clerk.
John E. Traeger, Sheriff.

Court met pursuant to an adjournment.
Court opened by proclamation.

And afterward, on the 3rd day of October, A. D. 1918, the following proceedings were had and entered of record in said cause, to-wit:

43 October Term, A. D. 1918, Calendar.

In the Matter of the Assignment of Cases to the First Branch Appellate Court, First District, Illinois.

On the Court's own motion it is ordered that the following numbered cases on the October Term Calendar, A. D. 1918, of said Court be and the same are hereby assigned to the First Branch Appellate Court for hearing and determination, to-wit:

103-24407 et al.

And afterwards, on the 17th day of December, A. D. 1918, it being one of the days of the — Term, A. D. 19— of said Court, the following proceedings were had and entered of record in said cause, to-wit:—

44

24407.

MARK OWEN & COMPANY

vs.

MICHIGAN CENTRAL R. R. CO.

Appeal from Municipal.

This cause having this day been reached in the call of the docket, and counsel desiring to argue the same, and the Court, not being fully advised in the premises, doth order that said cause be taken under advisement on briefs filed.

And afterwards, on the 29th day of April, A. D. 1919, it being one of the day of the March Term A. D. 1919 of said court, the following proceedings were had and entered of record in said cause, to-wit:

45

24407.

MARK OWEN AND COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, Appellant.

Appeal from Municipal Court of Chicago.

On this day came again the said parties and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error; Therefore, it is considered by the court that for that error and others in the record and proceedings aforesaid, the judgment of the Municipal Court of Chicago in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed. And the Court upon the allegations and proofs in the record in this cause contained finds the issues in favor of the appellant (plaintiff below) Mark Owen and Company.

And the Court doth further find that the said appellant (plaintiff below) Mark Owen and Company ought to have and recover of and from the said appellee (defendant below) Michigan Central R. R. Company, its damages by it sustained by reason of the premises. And the Court being now fully advised in the premises doth assess the damages in favor of the said appellant (plaintiff below) Mark Owen & Company, and against the said appellee (defendant below) Michigan Central Railroad Company, a corporation to the

46 sum of twenty three dollars and thirty cents ($23.30).

Therefore it is considered by the court that the said ap-

pellant (plaintiff below) Mark Owen and Company, do have and recover of and from the said appellee (defendant below) Michigan Central Railroad Company, its said damages of twenty three dollars and thirty cents ($23.30) in form as aforesaid by the court assessed, together with its costs by it in this behalf expended, to be taxed, and that it have execution therefor.

And afterwards, on the 13th day of May A. D. 1919, the following proceedings were had and entered of record in said cause, to-wit:

47 No. 24,407.

MARK OWEN AND COMPANY, Appellant,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellee.

Appeal from Municipal Court of Chicago.

The court having considered the petition of appellee praying for an appeal from the order and judgment of this court in said cause to the Supreme Court of the State of Illinois, and the Court being fully advised in the premises are of the opinion, and therefore certify, that this cause involves questions of law of such importance on account of principal and collateral interests involved as that it should be passed upon by the Supreme Court: It is therefore ordered that an appeal be allowed herein to the said Supreme Court on condition that appellee doth within twenty days from this date execute and file in said cause a good and sufficient appeal bond, conditioned according to law, in the penal sum of two hundred*ed* ($200.00) dollars, with surety thereto to be approved by the Court.

CHARLES A. McDONALD,
DAVID F. MATCHETT,
ALBERT C. BARNES,
Justices.

And afterwards, on the same day to-wit: the 13th day of May A. D. 1919, the following proceedings were had and entered of record in said cause, to-wit:

48 In re Publication of Written Decisions of this Court.

It is hereby ordered that the cases, the numbers and titles of which are given below, the written decisions of this Court filed the 29th day of April A. D. 1919 shall be published in full in the Appellate Court Reports.

And the decisions so filed which are not designated below shall be published by including an adequate abstract of such written decisions.

24,407, Owen v. Michigan Central R. R. Co. et al.

And afterwards, on the 21st day of April A. D. 1919, the following proceedings were had and entered of record in said cause, to-wit:

49

24,407.

MARK OWEN AND COMPANY, Appellant,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellee.

Appeal from Municipal Court of Chicago.

This day came Michigan Central R. R. Co., by its counsel, and presented its certain Appeal Bond in said cause in the penal sum of two hundred ($200.00) dollars, with National Surety Company, as surety thereto; and the Court, being fully satisfied as to the qualifications of said surety, doth order that said Appeal Bond be, and the same is hereby taken, approved and filed herein.

And afterwards, on the same day, to-wit: the 21st day of May A. D. 1919, an Appeal Bond was filed in said cause, which said bond is in the words and figures following to-wit:

50 Know all men by these presents, That we Michigan Central Railroad Company, a corporation, as Principal, and National Surety Company, a corporation, as surety, of the County of Cook and State of Illinois, are held and firmly bound unto Mark Owen and Company, a corporation, also of the same County and State, in the penal sum of Two hundred ($200.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 20th day of May A. D. 1919.

The condition of the above obligation is such, That whereas, the said Michigan Central Railroad Company did on the 7th day of March A. D. 1917, in the Municipal Court of Chicago, in the State aforesaid, recover a judgment against the said Mark Owen and Company for costs of suit, from which said judgment of the Municipal Court of Chicago, the said Mark Owen and Company prayed for and obtained an appeal to the Appellate Court within and for the First District of said State; and whereas the said Appellate Court did on the 29th day of April A. D. 1919, and at the March Term thereof, A. D. 1919, reverse the judgment of the Municipal Court aforesaid and did render judgment against the above bounden Michigan Central Railroad Company for twenty three and 30/100 ($23.30) dollars and costs of suit, from which order of reversal and judgment of the said Appellate Court the said Michigan Central Railroad Company has prayed for and obtained an appeal to the Supreme Court of the State of Illinois.

51 Now therefore, if the said Michigan Central Railroad Company shall duly prosecute its said appeal, with effect, and

moreover pay the amount of the judgment, costs, interests, and damages rendered, and to be rendered against it, in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

THE MICHIGAN CENTRAL
RAILROAD COMPANY. [SEAL.]
HENRY RUSSEL,
Vice President. [SEAL.]
NATIONAL SURETY COMPANY.
W. HERBERT STEWART,
Attorney in Fact. [SEAL.]

Approved:
CHARLES A. McDONALD.

52 I, James S. McInerney, Clerk of the Appellate Court, in and for the First District, of the State of Illinois and keeper of the records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings of the said Appellate Court in the above entitled cause, of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this twenty-third day of May in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.] JAMES S. McINERNEY,
Clerk of the Appellate Court of the First District, Illinois.

53 In the Supreme Court of Illinois, October Term, A. D. 1919.

MARK OWEN AND COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal from Appellate Court, First District.

Heard there on Appeal from Municipal Court of Chicago, Honorable Leo J. Doyle, Judge Presiding.

Assignment of Errors in the Supreme Court by Michigan — Railroad Company, Appellant Therein.

Now comes Michigan Central Railroad Company, appellant herein, by Winston, Strawn & Shaw, it- attorneys, and says that in the record and proceedings in the above entitled cause in the Appellate Court for the First District, there were and are manifest errors in this, to wit:

1. The Appellate Court for the First District erred in reversing the judgment of the trial court.

2. The Appellate Court for the First District erred in making a finding of the issues in said cause.

3. The Appellate Court for the First District erred in finding the issues in said cause in favor of Mark Owen and Company, appellee herein.

4. The Appellate Court for the First District erred in entering judgment in said cause in favor of appellee herein (Mark Owen and Company) and against appellant (Michigan Central Railroad Company).

54 5. The Appellate Court for the First District erred in not affirming the judgment of the trial court.

6. The finding and judgment of the Appellate Court for the First District are contrary to the evidence.

7. The finding and judgment of the Appellate Court for the First District are contrary to the evidence.

Wherefore, for the reasons above set forth, and each of them, and for various other errors appearing in the record, Michigan Central Railroad Company, appellant herein, prays that the judgment of the Appellate Court for the First District may be vacated and set aside.

MICHIGAN CENTRAL RAILROAD COMPANY.
By WINSTON, STRAWN & SHAW,
Attorneys for Appellant.

FRANK H. TOWNER,
Of Counsel.

55 And afterwards, to wit, on the 23rd day of October, A. D. 1919, the same being one of the days of the said October term of said Supreme Court, the following proceedings were by said Court had and entered of record in the words and figures following, to wit:

No. 12978.

MARK OWEN & COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal — First District.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and en-

tered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by F. H. Towner for appellant and W. B. Moulton for appellee, is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

56 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Second Day of December, in the Year of Our Lord One Thousand Nine Hundred and Nineteen, within and for the State of Illinois.

Present:
Chief Justice Frank K. Dunn,
Justice James H. Cartwright,
Justice Orrin N. Carter,
Justice Clyde E. Stone,
Justice William M. Farmer,
Justice Warren W. Duncan,
Justice Floyd E. Thompson,
Edward J. Brundage, Attorney General,
Warren C. Murray, Marshal.

Attest: CHARLES W. VAIL,
Clerk.

Be it remembered, that afterward, to wit: on the 17th day of December, 1919, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to wit:

No. 12978.

MARK OWEN & COMPANY, Appellee,

v.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Error to —.

Appeal from First District.

57 No. 12978.

Agenda No. 82.

In the Supreme Court of Illinois, October Term, 1919.

MARK OWEN & COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal from Appellate Court, First District.

Opinion by Farmer, J.

Mark Owen & Company, appellee, brought this action of the fourth class in the Municipal Court of Chicago, to recover of Appellant, Michigan Central Railroad Company, $23.30, alleged to be the value of some baskets of grapes, which were lost out of four car-load shipments, from points in Michigan over appellant's line of railroad, to appellee, at Chicago. The cause was tried in the Municipal Court of Chicago, without a jury, upon a written stipulation of facts. The Municipal Court found the issues in favor of the Defendant in that Court and the Plaintiff appealed to the Appellate Court for the First District, and that Court found the issues for plaintiff below, and rendered judgment in its favor for $23.30 and costs. The Appellate Court granted a Certificate of Importance and an appeal to this Court. It was stipulated that exhibits, designated by number, were the original bills of lading issued by appellant covering the shipments of the four cars of grapes. That the cars were transported by the appellant from points of origin to Chicago, consigned to appellee; that
58 they were placed on public delivery team tracks, notice thereof given to appellee, the seals an the cars broken and the shipments accepted by Appellee, before the loss complained of occurred. It was further stipulated that at the time Appellee started to unload the cars, each of them contained the number of baskets and pounds of grapes received by appellant for transportation.

Appellant contends that at the time the loss occurred the goods had been delivered to and accepted by appellee and the liability

as a common carrier had ceased and determined. Appellee contends that in the absence of any contract, it had a reasonable time after placement of the cars and notice, to unload them during which time appellant's liability as a carrier continued, and that at the time the loss sued for occurred, Appellant's liability by express contract was that of a common carrier. If by a fair construction of the bill of lading, which was the contract between the parties, appellant was liable as a common carrier, it will be unnecessary to determine other questions raised. In construing the bills of lading, if there be any doubt arising from the language used, as to its meaning, it is to be construed most strongly against appellant, because it was prepared by its officers or agents. Texas & Pacific Railway Co. v. Reiss, 183 U. S. 621. The grapes were an interstate shipment under a standard bill of lading, the material parts of which are: Section 1—"For loss, damage, or delay caused by fire occurring after forty-eight hours, exclusive of legal holidays, after notice of the arrival of the property at destination or at port of export, if intended for export, has been duly sent or given, the carrier's liability shall be that of warehouseman only."

59 Section 5. "Property not removed by the party entitled to receive it, within forty-eight hours, exclusive of legal holidays, after notice of its arrival has been duly sent or given, may be kept in car, depot, or place of delivery of the carrier, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner, and there held at owner's risk and without liability on the part of the carrier and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage."

As the shipments were interstate shipments, decisions of the Federal Courts construing bills of lading would control, (Gamble-Robinson Co. v. Union Pacific Railroad Co. 262 Ill. 400) if there were any such decisions, but counsel say there are none. The first section of the bill of lading as we read and understand it limits appellant's liability as a carrier to the period of forty-eight hours after notice "sent or given" of the arrival of the property at its destination. For loss occurring after forty-eight hours from the time of arrival and notice, the liability is that of warehouseman only. Section five provides that "property not removed" within forty-eight hours after notice of its arrival, may be kept in car, depot or place of delivery of the carrier subject to a reasonable charge for storage and the carrier's liability as warehouseman only, or at the option of the carrier it may be stored in a warehouse at the cost and risk of the owner without liability on the part of the carrier, subject to a lien for freight and storage charges. Appellant insists the bills of lading were designed to put a limit on its liability as a carrier in any event,

60 but that such liability ended before the expiration of that time, where as in this case the cars were placed on the public delivery team track, and appellee after being notified broke the seals, accepted the shipments and began unloading the cars. That does not appear to us to be the most reasonable construction of the language

of the bills of lading. Section five says as to property "not removed" within forty-eight hours after notice, not property "not delivered" within that time, it may be kept in car, depot or place of delivery subject to a reasonable charge for storage and the carrier's responsibility as a warehouseman only. It would seem if it had been contemplated that the liability as carrier was to cease under the facts here stipulated, which it is insisted constituted a delivery, the language of the bills of lading might easily have made that intention clear. The ordinary mind would understand, we think, from reading the bills of lading that although the car may have been placed for unloading, opened and the work of unloading begun, the carrier's liability as such continued as to "property not removed" forty-eight hours, provided that was a reasonable time for unloading, and it is not disputed that forty-eight hours was a reasonable time for appellee to unload the cars. The Municipal Court held in a proposition of law that the cars were unloaded by appellee in a reasonable time and that is not questioned by appellant. The construction we have placed on the language of the bills of lading seems to us the reasonable one. The most that can be said is that their meaning is not clear. Certainly more is left to be implied or inferred if the construction contended for by appellant is given them, than is required to construe them as we have done. The question of the construction of this form of bill of lading has been passed upon by three State courts. McEntire v. Chicago, Rock Island & Pacific Railroad Co., 98 Neb. 92; Gary Bros. & Gaffke Co. v. Chicago, Milwaukee and Puget Sound Railway Co., 49 Mont. 524; Rustad
61 v. Great Northern Railway Company, 122 Minn. 453.

The Court in the McEntire case said of Section five of the bill of lading, that the more reasonable construction was, that property, not removed within forty-eight hours after notice of its arrival, might be left in the car subject to a reasonable charge for storage and the liability of the carrier should be that of warehouseman only; that if the consignee had not opened the car and taken possession, but had left it on the side-track in the condition received, the carrier would be liable as such, forty-eight hours after notice of its arrival, and after that time as warehouseman. In that case the consignee put his own padlock on the car and kept the key in his possession.

In the Gary Bros. case a car of potatoes froze within forty-eight hours after placement and notice. The Court held the carrier liable as such under the bill of lading forty-eight hours, and that it could only be released from such liability during that time by the removal of the potatoes. The same construction was given the same form of bill of lading in the Rustad case, the Court holding that under the contract the liability as carrier continued forty-eight hours even if the law in the absence of the contract might have terminated it sooner.

We are of opinion the Judgment of the Appellate Court was correct and it is affirmed.

Judgment Affirmed.

62 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Second Day of December, in the Year of Our Lord One Thousand Nine Hundred and Nineteen, within and for the State of Illinois.

Present:

Chief Justice Frank K. Dunn.
Justice James H. Cartwright.
Justice Orrin N. Carter.
Justice Clyde E. Stone.
Justice William M. Farmer.
Justice Warren W. Duncan.
Justice Floyd E. Thompson.
Edward J. Brundage, Attorney General.
Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL,
Clerk.

Be it remembered, that, to-wit: on the 17th day of December, A. D. 1919, the same being one of the days of the said December term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

December 17th, A. D. 1919.

No. 12978.

MARK OWEN & COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal from First District.

Error to —.

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious, or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Judgment of the Appellate Court aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

63 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court Begun and Held at Springfield on Tuesday, the Third Day of February, in the Year of Our Lord One Thousand Nine Hundred and Twenty, within and for the State of Illinois.

Present:

Frank K. Dunn, Chief Justice.
Justice James H. Cartwright.
Justice Orrin N. Carter.
Justice Clyde E. Stone.
Justice William M. Farmer.
Justice Warren W. Duncan.
Justice Floyd E. Thompson.
Edward J. Brundage, Attorney General.
Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL,
Clerk.

Be it remembered, that to-wit, on the 5th day of February, A. D. 1920, the same being one of the days of the said February term of said Supreme Court, the following proceedings were by said Court had and entered of record in the words and figures following, to-wit:

No. 12978.

MARK OWEN & COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, Appellant.

Appeal from First District.

And now on this day the Court having duly considered petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

64 STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the above and foregoing to be a true copy of Transcripts of Record from the Municipal Court of the City of Chicago and the Appellate Court of the First District, in a certain cause entitled in this Court No. 12978, Mark Owen & Company vs. Michigan Central Railroad Company, a corporation, Appellant, Appeal First District, filed in this office on the 15th day of September, A. D. 1919, together with a complete transcript of proceedings had in the Supreme Court of Illinois.

Witness my hand and Seal of said Supreme Court, at Springfield, in said State, this 5th day of March, A. D. 1920.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHARLES W. VAIL,
Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Being informed that there is now pending before you a suit in which Michigan Central Railroad Company is appellant, and Mark Owen & Company is appellee, No. 12978, which suit was removed into the said Supreme Court by virtue of an appeal from the Appellate Court, First District, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,602. Supreme Court of the United States, No. 847, October Term, 1919. Michigan Central Railroad Company vs. Mark Owen & Company. Writ of Certiorari.

[Stamped:] Filed May 12, '20. Chas. W. Vail, Clerk Supreme Court.

In the Supreme Court of Illinois, October Term, A. D. 1919.

No. 12978.

MARK OWEN & COMPANY, Appellee,

vs.

MICHIGAN CENTRAL RAILROAD COMPANY, a Corporation, Appellant.

Appeal from Appellate Court, First District.

Heard there on Appeal from Municipal Court of Chicago.

Hon. Leo J. Doyle, Judge, Presiding.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the certified transcript of record in the above entitled cause, now on file in the office of the Clerk of

the Supreme Court of the United States in the case entitled in that court as Michigan Central Railroad Company vs. Mark Owen & Company, No. 847 of the October Term, A. D. 1919, may be taken as the return of the Supreme Court of Illinois to the writ of certiorari granted by the Supreme Court of the United States on May 3, A. D. 1920, directed to the Supreme Court of the State of Illinois.

WILLIAM B. MOULTON,
JOSEPH A. BATES,
Attorneys for Mark Owen & Company.
WINSTON, STRAWN & SHAW,
Attorneys for Michigan Central R. R. Co.

Supreme Court of Illinois.

Clerk's Office.

Springfield, Illinois, May 12, 1920.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing contains a true copy of the Stipulation of counsel in the case therein stated, as appears from the original now on file in this office.

Witness my signature and the seal of said Court hereto affixed, the day and year above written.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1918.]

CHAS. W. VAIL,
Clerk Supreme Court of Illinois.

[Endorsed:] File No. 27,602. Supreme Court U. S., October Term, 1919. Term No. 847. Michigan Central Railroad Company, Petitioner, vs. Mark Owen & Company. Writ of certiorari and return. Filed May 20, 1920.